

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for **R.P.**, and Denise L., )  
by and for **K.L.**, )

Plaintiffs )

v. )

**SCHOOL DISTRICT OF THE CITY** )  
**OF ERIE, PENNSYLVANIA; JANET** )  
**WOODS**, Individually and in her Capacity )  
as Principal of Strong Vincent High )  
School; and **LINDA L. CAPPABIANCA**, )  
Individually and in her Capacity as )  
Assistant Principal of Strong Vincent High )  
School, )

Defendants )

Civil Action No. 03-390 Erie

**DEFENDANTS' MOTION FOR LEAVE TO FILE BRIEF EXCEEDING 25 PAGES**

Defendants The School District of the City of Erie, Pennsylvania and Linda L.

Cappabianca respectfully submit the following as Defendants' Motion for Leave to File Brief Exceeding 25 Pages.

1. On April 8, 2004 the Court issued its Case Management Order in this action, paragraph 9(d) of which states that "Post-Trial Motions may be filed with a Brief in Support not to exceed 25 pages in length." While that Case Management Order was modified a number of times, this requirement was left intact.

2. While no mention is expressly made in the Case Management Order of the length of briefs in response to post-trial motions, it follows from the above-quoted provision that the Court's intent is that this requirement also applies to response briefs.

3. This action was the subject of a jury trial over which Hon. Sean J. McLaughlin presided from and including Monday, January 23, 2006 through Monday, January 30, 2006, the jury returning a verdict for defendants on January 30, 2006.

4. On February 13, 2006 plaintiffs filed Plaintiffs' Motion for New Trial Filed Under Rule 59(a) Fed.R.Civ. Pro.

5. Plaintiffs' motion raises four issues: (a) whether the verdict was against the weight of the evidence, (b) whether the Court committed prejudicial error in its instructions to the jury, (3) whether the Court committed prejudicial error in its preparation of the verdict slip and (d) whether defendants' counsel's remarks in his closing argument were improper and unfairly prejudiced the jury in its deliberations.

6. It is respectfully submitted that an adequate review of these issues, especially the weight-of-the-evidence issue, requires that the record of the trial of this action be reviewed with care, and that a careful review of the record requires that significant time be devoted in defendants' response brief to a summary of that record.

7. On February 14, 2006 the Court issued an order requiring the filing of defendants' response to plaintiffs' motion for new trial within twenty days of the completion of the trial transcript. The trial transcript was filed on June 26, 2006 and, therefore, defendants' brief must be filed on or before July 17, 2006.

8. Defendants' counsel is in the midst of preparing a response brief for defendants. It has become apparent in the course of that preparation that adequate attention cannot be paid to the record of the trial of this action without exceeding the 25-page limit on post-trial briefs imposed by the Case Management Order. Defendants' counsel estimates that increasing that

limit to 40 pages would allow him to give the facts of the trial of this action the attention they deserve.

WHEREFORE, defendants The School District of the City of Erie, Pennsylvania and Linda L. Cappabianca respectfully request that the Court issue an order granting them leave to file a brief in response to plaintiffs' motion for new trial that is no more than 40 pages in length.

/s/ James T. Marnen

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Pennsylvania and Linda L. Cappabianca

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## Defendants

Civil Action No. 03-390 Erie

# CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Edward A. Olds, counsel of record for plaintiffs.

/s/ James T. Marnen  
James T. Marnen